**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Federal-State Joint Conference On Accounting Issues | ) | WC Docket No. 02-269 |
| | ) | |
| 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II | ) | CC Docket No. 00-199 |
| | ) | |
| Jurisdictional Separations Reform and Referral to the Federal-State Joint Board | ) | CC Docket No. 80-286 |
| | ) | |
| Local Competition and Broadband Reporting | ) | CC Docket No. 99-301 |

# REPORT AND ORDER

**Adopted: June 22, 2004** **Released: June 24, 2004**

By the Commission: Commissioner Martin approving in part, concurring in part and issuing a statement; Commissioners Copps and Adelstein approving in part, dissenting in part, and issuing separate statements.

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## I. INTRODUCTION AND BACKGROUND

1. In this Order, we address recommendations made by the Federal-State Joint Conference on Accounting Issues (Joint Conference) in a report filed with the Commission on October 9, 2003.[1] The Commission sought comment on the Joint Conference's recommendations in a *Notice of Proposed Rulemaking* (*Notice*) released on December 23, 2003.[2] Comments were due by January 30, 2004, and replies by February 17, 2004.

2. On September 5, 2002, the Commission convened the Joint Conference "to provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough."[3] The Commission found that the "Joint Conference will provide a focused means by which we and interested state commissions may conduct an open dialogue, collect and exchange information, and consider initiatives that will improve the collection of adequate, truthful, and thorough accounting data for regulatory purposes."[4] In charging the Joint Conference with the task of reexamining federal and state accounting and reporting requirements, the Commission noted that the Joint Conference has a broad mandate to perform its work, including the ability to recommend additions to, or eliminations of, accounting requirements.[5]

3. On November 12, 2002, the Commission released an order suspending implementation of four previously-adopted accounting and recordkeeping rules to allow the Joint Conference time to review

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[1] Letter from Federal-State Joint Conference on Accounting Issues to Marlene H. Dortch, Secretary, FCC (Oct. 9, 2003) (*Joint Conference Report*) (submitting proposed recommendations to Commission's accounting rules).

[2] *Federal-State Joint Conference on Accounting Issues, 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting,* WC Docket No. 02-269, CC Docket Nos. 00-199, 80-286, 99-301, Notice of Proposed Rulemaking, 18 FCC Rcd 26991 (2003) (*Notice*). The Joint Conference report was attached to the *Notice* in its entirety as Appendix A.

[3] *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Order, 17 FCC Rcd 17025, 17025-27 paras. 1, 7 (2002) (*Convening Order*).

[4] *Id.* at 17026 para. 4.

[5] *Id.* at 17027 para. 7. The Joint Conference sought comment on a range of accounting and reporting issues in a Public Notice. *See Federal-State Joint Conference on Accounting Issues Request for Comment*, WC Docket No. 02-269, Public Notice, 17 FCC Rcd 24902 (2002). In addition, the Joint Conference held a public hearing to gather information from a cross-section of telecommunications industry representatives. *See List of Panelists to Attend Public Hearing Held by the Federal-State Joint Conference on Accounting Issues*, Public Notice, 18 FCC Rcd 2532 (2003).

these rules before carriers were required to implement them.[6] These rules had been adopted in 2001 in the *Phase II Report and Order* in which the Commission had eliminated many Part 32 accounts, defined incumbent local exchange carriers (ILECs) subject to its accounting rules, streamlined its affiliate transaction rules and revised some of its ARMIS reporting requirements.[7]

4. On December 12, 2002, as part of its comprehensive review of the Commission's accounting and reporting requirements, the Joint Conference issued a Public Notice requesting comment on a broad range of regulatory accounting issues.[8] The Joint Conference also sought comment on four groups of specific issues related to the *Phase II Report and Order*: (1) certain accounts that had been requested by states but not adopted by the Commission; (2) changes to the affiliate transaction rules; (3) the accounting and recordkeeping rules that were suspended by the Commission in its November 12, 2002 Order; and (4) the issues raised by the outstanding petitions for reconsideration of the *Phase II Report and Order*.[9]

5. In its report, the Joint Conference makes several recommendations related to the issues it raised in its December 12, 2002 Public Notice. It also makes recommendations on other accounting-related matters. In this Order, we adopt some of the Joint Conference's recommendations, and we resolve the outstanding petitions for reconsideration of the *Phase II Report and Order*.[10]

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[6] *Federal-State Joint Conference on Accounting Issues*, Order, 17 FCC Rcd 23243 (2002) (suspending implementation until July 1, 2003) (*First Suspension Order*). Subsequent orders have suspended implementation through June 30, 2004. *See Federal-State Joint Conference on Accounting Issues*, Order, 18 FCC Rcd 12636 (2003) (further suspending implementation until January 1, 2004) (*Second Suspension Order*); *Federal-State Joint Conference on Accounting Issues*, Order, 18 FCC Rcd 26988 (2003) (further suspending implementation through June 30, 2004) (*Third Suspension Order*). The following rule changes were suspended by these three orders: (1) consolidation of Accounts 6621 through 6623 into Account 6620, with subaccounts for wholesale and retail; (2) consolidation of Account 5230, Directory Revenue, into Account 5200, Miscellaneous Revenue; (3) consolidation of the depreciation and amortization expense accounts (Account 6561 through 6565) into Account 6560, Depreciation and Amortization Expenses; and (4) revised "Loop Sheath Kilometers" data collection in Table II of ARMIS Report 43-07.

[7] *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II, Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, 80-286, 16 FCC Rcd 19913 (2001) (*Phase II Report and Order*).

[8] *Federal-State Joint Conference on Accounting Issues*, Public Notice, 17 FCC Rcd 24902 (2002).

[9] Petition of BellSouth, SBC and Verizon for Reconsideration of Report and Order in CC Docket Nos. 00-199, 97-212, 80-286 (filed Mar. 8, 2002) (Joint Petition); SBC Communications, Inc. Petition for Reconsideration at 1-3 (filed Mar. 8, 2002) (SBC Petition).

[10] *See* 47 C.F.R. § 32.27; *see Phase II Order*, 16 FCC Rcd at 19946-52 paras. 85-100; *Accounting Safeguards Order*, 11 FCC Rcd at 17582-17619 paras. 101-170. The Joint Conference also recommends that the Commission adopt, under our general authority, separate affiliate, accounting and auditing requirements focused on the in-region interLATA telecommunications service operations of the Bell Operating Companies (BOCs). *Joint Conference Recommendation* at 27-31. In May 2002, the Commission sought comment on a similar proposal in a proceeding devoted to considering the implications of the sunset of section 272 requirements. *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914, 10936-37 para. 46 (2003) (asking whether separate affiliate requirements are appropriate to apply to BOCs after sunset of section 272). The Joint Conference Recommendation has been entered into WC Docket No. 02-112 as an *ex parte* filing for consideration by the participants in that proceeding. Accordingly, the Joint Conference Recommendation on this subject will be resolved in WC Docket No. 02-112. *See Notice*, 18 FCC Rcd at 26993 n.9.

## II. DISCUSSION

### A. Modifying Part 32 Accounts

#### 1. Reinstatement of Account 5230, Directory Revenue

6. In the *Phase II Report and Order,* we consolidated several revenue accounts, including Account 5230, Directory revenue, into Account 5200, Miscellaneous revenue.[11] The Joint Conference recommends that we reinstate Account 5230 as a separate Part 32 account. It maintains that directory revenues are created through a separate and distinct line of business and as such should be accounted for separately. The Joint Conference emphasizes that distinguishing directory revenues from other revenues is important for states that impute these revenues to the carrier's regulated operations in computing revenue requirements. The Joint Conference indicates that this practice is followed by some states using alternative regulation plans, as well as by states that continue to use rate-of-return regulation.[12] AT&T, NASUCA, and Wisconsin support the Joint Conference's recommendation.[13]

7. The United States Telephone Association (USTA) and the Regional Bell Operating Companies (RBOCs) oppose reinstating Account 5230 as a separate account.[14] BellSouth argues that there is no need for a separate Part 32 account because carriers can provide directory revenue information directly to the states.[15]

8. We conclude that this account should be reinstated, in light of its continued significance in state ratemaking processes.[16] Because our previous action consolidating the Directory revenue account into Account 5200, Miscellaneous revenue, has not yet been implemented, retaining Account 5230 will not impose any new burdens on carriers. Therefore, we reinstate Account 5230, Directory revenue.

#### 2. Reinstatement of Accounts 6621, 6622, and 6623

9. The Joint Conference recommends that the Commission reverse its decision in the *Phase II Report and Order* to consolidate Account 6621, Call completion services, Account 6622, Number services, and Account 6623, Customer services, into a single account—Account 6620, Services—and its decision to establish wholesale and retail subaccounts for Account 6620. It recommends that the Commission consider other measures to achieve the Phase II goals of: (1) recognizing an increased importance of the wholesale versus retail distinction as competition develops in the local exchange market; and (2) assisting the states in developing unbundled network element (UNE) rates that properly reflect the costs of providing a wholesale service. As an alternative, the Joint Conference suggests consolidation of Accounts 6621 and 6622 and retention of Account 6623 as a separate account with wholesale and retail subaccounts for Account 6623 only. It also suggests, as

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[11] 47 C.F.R. § 32.5200.

[12] Joint Conference Report at 9.

[13] AT&T Corp. (AT&T) Comments at 14-15; National Association of State Utility Consumer Advocates (NASUCA) Comments at 9; Wisconsin Comments at 5-6.

[14] BellSouth Corporation (BellSouth) Comments at 11-12; Qwest Corporation (Qwest) Comments at 14-15; USTA Comments at 7-8; The Verizon Telephone Companies (Verizon) Comments, Att. B at 1-2.

[15] BellSouth Comments at 11-12.

[16] 47 U.S.C. § 220(i). Section 220(i) reads as follows: "The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations." *Id.*

another alternative, modification of ARMIS reporting to provide wholesale/retail percentages for Account 6623 instead of requiring subaccounts.[17]

10. In their petition for reconsideration of the *Phase II Report and Order*, BellSouth, SBC and Verizon seek elimination of the newly-created wholesale and retail subaccounts, arguing that they are not necessary in the public interest, they conflict with existing regulations, and they would be burdensome to implement.[18] Verizon estimates that it would take at least four to six months to structure and conduct the studies necessary to allocate Account 6620 expenses between wholesale and retail subaccounts, costing close to $3.5 million in additional implementation costs, and over $2.5 million per year in ongoing costs.[19] BellSouth estimates that it would cost approximately $12.5 million and take 18 months to implement these changes.[20] They argue that the accounting costs to be included in the wholesale and retail subaccounts will not be comparable to the forward-looking costs included in UNE cost studies.[21] In addition, they argue that many of the costs included in the consolidated account, specifically those costs related to call completion services (Account 6621) and number services (Account 6622), are unrelated to UNE pricing because the services are not required to be offered at UNE rates.[22]

11. In opposition, AT&T states that contrary to the petitioners' arguments, wholesale and retail costs are relevant to the pricing of UNEs. AT&T states that while UNE pricing is based on TELRIC, UNE pricing reflects common costs, loading factors and other overhead costs attributable to the costs of operating a wholesale network.[23] AT&T argues that the petitioners' assertion of the burden related to the creation of the wholesale and retail subaccounts is untimely and consists of nothing more than bald, unsupported assertions without explanation or analysis.[24]

12. In response to the Joint Conference's recommendation, AT&T and Wisconsin support retaining the consolidated Account 6620 and the wholesale and retail subaccounts.[25] SBC, USTA and Verizon also support retaining the consolidated Account 6620, but oppose both the subaccounts and the reporting of wholesale/retail data.[26] BellSouth, on the other hand, supports reinstating Accounts 6621, 6622 and 6623, and opposes the subaccounts and the reporting of wholesale/retail data.[27] SBC states that if the Commission determines there is a federal need for wholesale/retail data, it should reinstate the separate accounts and create wholesale/retail subaccounts for Account 6623 only.[28]

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[17] Joint Conference Report at 15.

[18] Joint Petition at 1.

[19] Joint Petition at 5; Verizon Comments at 4; SBC Comments, Att. A at 16.

[20] Joint Petition at 6; BellSouth Comments at 13 n.28.

[21] *Id.* at 4.

[22] *Id.*, citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3892 para. 442 (1999) ("incumbent LECs need not provide access to [operator services and directory assistance] as an unbundled network element").

[23] AT&T Opposition to Joint Petition at 7.

[24] *Id.* at 8.

[25] AT&T Comments at 16; Wisconsin Comments at 6.

[26] SBC Comments at 6; USTA Comments at 8; Verizon Comments, App. B at 2.

[27] BellSouth Comments at 13.

[28] SBC Comments at 7.

13. While BellSouth acknowledges that reporting wholesale/retail data as a percentage in ARMIS would be less burdensome than the use of subaccounts, it states that the Commission must still assess whether this alternative is necessary.[29] Verizon estimates that it would take at least three months to develop and implement a process to report the wholesale percentages for Account 6623 in ARMIS, and that such reporting would cost close to $1 million per year in on-going costs.[30] Wisconsin argues that if the Commission adopts ARMIS reporting of wholesale/retail data instead of subaccounts, ILECs should report the percentages on an individual state basis for disaggregated Accounts 6621, 6622, and 6623.[31]

14. Based on the comments, we reinstate Accounts 6621, 6622, and 6623 and require wholesale/retail information only for Account 6623. In the *Phase II Report and Order*, we took two separate actions with respect to these accounts. First, we consolidated them into Account 6620, as part of our decision to greatly reduce the number of Class A accounts required for customer operations expense and corporate operations expense.[32] Second, we decided to require wholesale and retail subaccounts in Account 6620 because "the wholesale versus retail distinction is important for customer service because the per-line expenditures for customer service are higher at the retail level."[33] Upon reconsideration, we find that the combination of these two actions has produced an unnecessarily burdensome and overbroad subaccount requirement. We see no regulatory need for wholesale/retail information regarding call completion services (Account 6621) or number services (Account 6622). In addition, the record before us indicates that reporting wholesale/retail percentages in ARMIS would both satisfy regulatory needs and be less burdensome than creating subaccounts. Accordingly, we do not require wholesale/retail information for Accounts 6621 and 6622. We also decide not to require ILECs to create wholesale and retail subaccounts for Account 6623. We will instead require that ILECs report their wholesale and retail percentages for Account 6623, Customer services, in the ARMIS 43-03 report. This approach will be far less burdensome than the creation of subaccounts, and will provide wholesale and retail information for the Commission and the states for those costs that are most relevant. Reporting in ARMIS 43-03 will result in identification of the wholesale and retail percentages on a state-by-state basis. This is consistent with the Commission's determination in the *Phase II Report and Order* that wholesale/retail information is important for development of UNE rates, which are set by the states.[34]

### 3. Reinstatement of Separate Depreciation and Amortization Accounts 6561-6565

15. The Joint Conference recommends that the Commission reverse its decision to consolidate the following accounts into Account 6560, Depreciation and amortization expense: Accounts 6561, Depreciation expense—telecommunications plant in service; Account 6562, Depreciation expense—property held for future telecommunications use; Account 6563, Amortization expense—tangible; Account 6564 Amortization expense—intangible; Account 6565, Amortization expense—other.

16. The Joint Conference is concerned about an adverse impact on rate proceedings resulting from the lack of detail provided by the consolidated Account 6560. The Joint Conference states that although many jurisdictions have adopted alternative regulation plans, some of these plans are earnings-based, require refunds, or provide options to return to rate-of-return regulation if alternative regulation

[29] BellSouth Comments at 13.

[30] Verizon Comments, App. B at 5.

[31] Wisconsin Comments at 7.

[32] *Phase II Report and Order*, 16 FCC Rcd at 19927-28 paras. 39, 41.

[33] *Id.* at 19938-39 para. 64.

[34] *Id.*

proves ineffective—and therefore, the Commission should retain the separate depreciation and amortization accounts.[35]

17. NASUCA, RUS and Wisconsin favor retention of the depreciation and amortization expense accounts.[36] Wisconsin states that it is required by statute to revise depreciation rates for telecommunications carriers on a biennial basis. Wisconsin also states that depreciation rates have been used in proceedings to determine UNE rates. Wisconsin asserts that, though not required at the federal level, it will require even Class B ILECs in its state to submit this level of detail in their annual reports to that state commission.[37] USTA and the RBOCs oppose the restoration of these accounts.[38]

18. We accept the Joint Conference's recommendation and reinstate the depreciation and amortization expense accounts. The local exchange industry is a capital-intensive industry, and plant assets constitute a major component of the costs of providing service. In the Commission's 1998 biennial review of its depreciation requirements, it stated that depreciation "constitutes 28 percent of incumbent LECs' total operating expenses, and is their largest single expense."[39] Current available data indicates that this percentage has increased to 33 percent, and that depreciation expense remains the ILECs' largest single expense.[40] Depreciation also is used in the calculation of UNE rates.[41] We conclude, therefore, that depreciation expense should be maintained in discrete accounts and not commingled with amortization expenses. Because we deferred action on consolidating Accounts 6561-6565,[42] reinstatement of the individual depreciation and amortization expense accounts will not cause any additional implementation burdens to carriers.

### 4. Addition of New Accounts

19. The Joint Conference recommends that we add new Part 32 accounts for: (1) optical switching; (2) switching software; (3) loop and inter-office transport; (4) interconnection revenue; and (5) universal service revenue and expense. In this Order, as discussed below, we reject the Joint Conference's recommendation to add new Part 32 accounts. However, we do require ILECs to maintain subsidiary record categories to identify interconnection revenues.

20. Optical Switching. The Joint Conference recommends that the Commission revise Part 32 to add a new account for optical switching. The Joint Conference believes that this account will

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[35] Joint Conference Report at 15-16.

[36] NASUCA Comments at 10; Rural Utilities Service (RUS) Comments at 2; Wisconsin Comments at 8. RUS believes that it would also be appropriate for the Commission to restore the associated amortization reserve accounts that were eliminated in the *Phase II Report and Order*. RUS Comments at 2. We will not address the reinstatement of the amortization reserve accounts in this proceeding. *See infra* Section E.

[37] Wisconsin Comments at 8-9.

[38] BellSouth Comments at 14; SBC Comments, Att. A at 13-14; USTA Comments at 7; Verizon Comments, Att. B at 5.

[39] *1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137, Report and Order, ASD 98-91, Memorandum Opinion and Order, 15 FCC Rcd 242, 244 para. 3 (1999).

[40] Federal Communications Commission, *Statistics of Communications Common Carriers*, Table 2.9 (Feb. 2004).

[41] *See supra* para. 17.

[42] *See supra* n.6.

provide useful data to the states and to the Commission in monitoring how optical switching technology is deployed throughout the telecommunications network.[43]

21. AT&T, NASUCA, RUS and Wisconsin agree with the Joint Conference's recommendation to add a new account for optical switching.[44] AT&T and Wisconsin state that this new account will provide useful data with respect to the deployment of advanced services in the marketplace and on how the ILECs' business models may be changing in an increasingly competitive environment.[45] The RBOCs and USTA, on the other hand, disagree with the recommendation, stating that optical switching technology is not currently deployed in the marketplace, and thus, to add a new account for these switches makes no sense.[46] We decide not to create a new Part 32 account for optical switching. Until there is substantial evidence that optical switches are actually being deployed in the network, a new account is unnecessary. It would be unduly burdensome to require the carriers to create an account for technology that is not currently being used. Therefore, we will not implement this Joint Conference recommendation.

22. Switching Software Accounts. The Joint Conference recommends that the FCC revise Part 32 to add new investment and expense accounts to track software information associated with switching. The Joint Conference believes that information on switching software is needed to monitor technological development of the network, and would also be useful in developing UNE rates for switching.[47]

23. Several commenters agree with the Joint Conference's recommendation to add new accounts for switching software. These parties believe that separately identifying switching software costs in a standalone Part 32 account will provide the Commission with the information necessary to determine a carrier's total switching costs, which is an increasingly important element in making UNE pricing determinations as well as in determining high-cost universal service support.[48] The RBOCs and USTA oppose this recommendation. They contend that there is no federal need for switching software accounts because software costs are already segregated in Part 32 Account 2690, Intangibles.[49] We decide not to add new accounts for switching software. Switching software is already segregated in Account 2690 at the subsidiary record category level.[50] It would be unduly burdensome to require the carriers to create a new account for switching software information in a Part 32 account when that information already is available in subsidiary record categories. When states need this information, they can request it from the carriers. Therefore, we do not implement this recommendation by the Joint Conference.

24. Loop and Inter-Office Transport. The Joint Conference recommends that the Commission revise Part 32 to add new accounts for loop and inter-office transport. It states that contract

[43] The Joint Conference also argues that accounting data with respect to optical switches is needed to properly estimate forward-looking switching costs for use in UNE pricing matters. Joint Conference Report at 17-18.

[44] AT&T Comments at 18; NASUCA Comments at 8; RUS Comments at 2; Wisconsin Comments at 10.

[45] AT&T Comments at 18; Wisconsin Comments at 10.

[46] BellSouth Comments at 18; Qwest Comments at 14; SBC Comments, Att. A at 10; USTA Comments at 11; Verizon Comments at 19, Att. B at 7.

[47] *See* Joint Conference Report at 18-19.

[48] AT&T Comments at 18; NASUCA Comments at 8; RUS Comments at 2; Wisconsin Comments at 10.

[49] BellSouth Comments at 19; SBC Comments, Att. A at 10; USTA Comments at 11-12; Verizon Comments at 19, Att. B at 7-8.

[50] *See* 47 C.F.R. § 32.2690(b).

prices and model algorithms are inputs needed to determine compliance with TELRIC pricing standards. To the extent that ILECs claim that UNE rates do not cover accounting costs, data separating loop costs from transport costs are needed to make comparisons to accounting costs. Additionally, if separate wholesale and retail companies are created, separate data for loop versus transport costs may be needed to develop transfer prices.[51] NASUCA and Wisconsin support the Joint Conference's recommendation.[52]

25. In the Phase II proceeding, we declined to add subaccounts for loop and interoffice transport to central office transmission, cable and wire facilities, and information origination/termination accounts. We acknowledged the potential usefulness of this disaggregated information, but concluded that allocating these costs to separate subaccounts would be overly burdensome because, in some cases, both loop and interoffice transport are carried on the same cable facility.[53]

26. We agree with BellSouth and Verizon that recording plant in loop and interoffice transport accounts would be contrary to the design of our Part 32 accounting system.[54] The Part 32 accounts reflect the actual investment, revenues and expenses incurred by ILECs. The Part 32 accounting system is not designed to reflect the allocation of investments and expenses among types of traffic or among services. With current technology, both types of traffic, loop and interoffice transport, may ride together on the same facilities. In order to maintain separate accounts for loop and interoffice transport, plant would have to be allocated between these two categories. The requested accounting change would require a massive restructuring of the current plant and plant-related expense accounts, which would be an extremely burdensome task for ILECs. Even the creation of subaccounts within the existing plant accounts would require extensive accounting system changes. Therefore, we decline to adopt the Joint Conference's recommendation, and do not add new Part 32 accounts for loop and inter-office transport.

27. Interconnection Revenue. The Joint Conference recommends that we add a new Part 32 account for interconnection revenue with separate subaccounts for UNEs, resale, reciprocal compensation, and other interconnection revenues. The Joint Conference contends that data to account for sources of revenue are necessary to monitor the transition to a competitive marketplace. It claims this data will be of value in assessing how the interconnection processes further the development of local competition. It asserts that interconnection accounts would assist states in assessing local competition and whether such competition is getting a foothold in their states. This data could prove useful to states in formulating policy. The addition of these accounts would clearly help the states and the Commission better understand the degree of local competition and enable regulators to take steps to address issues that may be relevant to the state of local competition.[55] NASUCA and Wisconsin support the Joint Conference's recommendation.[56]

28. The RBOCs and USTA oppose the addition of new accounts and subaccounts for interconnection revenues.[57] BellSouth states that resale revenue follows the service with which it is associated. BellSouth and Verizon claim that to segregate resale revenue into one subaccount would

[51] *See* Joint Conference Report at 19.

[52] NASUCA Comments at 10-12; Wisconsin Comments at 11.

[53] *See Phase II Report and Order*, 16 FCC Rcd at 19938 para. 63.

[54] *See* BellSouth Comments at 20; Verizon Comments, Att. B at 8-10.

[55] *See* Joint Conference Report at 19-20.

[56] NASUCA Comments at 10-12; Wisconsin Comments at 12.

[57] BellSouth Comments at 15; Qwest Comments at 14-15; Verizon Comments, Att. B at 10-11.

result in major changes to their accounting systems and to Part 36, Separations.[58] They also question the states' logic for needing interconnection revenues to be reported separately.[59]

29. In the Phase II proceeding, we consolidated Account 5240, Rent revenue, into Account 5200, Miscellaneous revenue.[60] Because the rent revenue account was used to record UNE revenue, this change resulted in UNE revenue being recorded in the Miscellaneous revenue account. In addition, we eliminated Account 5084, State access revenues, which is where some carriers recorded reciprocal compensation revenue. We directed carriers to record these revenues as part of Accounts 5081, End user revenue, 5082, Switched Access revenue and 5083, Special access revenue. We also declined to establish a new account to record resale revenues. ILECs currently record resale revenues in the various accounts where they record the revenues derived from various retail services.[61]

30. We agree that separately identifying interconnection revenues would be valuable in monitoring the development of local competition, allowing us to monitor changes in UNE revenues compared to other revenues, which could indirectly indicate changes in the number of ILEC customers. We also find, however, that some revenues, particularly resale revenue, cannot be easily redirected to a single account without major reprogramming since resale revenue follows the service sold. Therefore, we do not establish a separate account for interconnection revenue. Rather, we require that ILECs maintain subsidiary record categories for unbundled network element revenues, resale revenues, reciprocal compensation revenues, and other interconnection revenues in the accounts in which these revenues are currently recorded. We require ILECs to make this data available to the states and to us upon request. We believe that this subsidiary record requirement strikes a balance by achieving the goals of state and federal regulators, while minimizing the burden on ILECs.

31. Universal Service Accounts. The Joint Conference recommends that the Commission add two new accounts to Part 32 to track federal universal service funds—a new Part 32 Universal Service Revenue account and a new Part 32 Universal Service Expense account. The Joint Conference believes that these new accounts will allow the Commission to specifically track federal universal service amounts and will help the Commission to better understand the federal universal fund programs and the effect these programs have on consumers. The Joint Conference states that with no specific accounts assigned, universal service revenues will be included in other Part 32 accounts where they will be indistinguishable from other revenue types.[62]

32. AT&T, NASUCA, RUS and Wisconsin favor adding new accounts to Part 32 to monitor Universal Service amounts. They state that these accounts will provide the Commission and the states with the information necessary to adequately track ILEC universal service activity.[63] Conversely, the RBOCs and USTA argue that there is no federal need for this information. They state that the Commission already collects universal service information on FCC Form 499 and that this information is also available from USAC.[64]

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[58] BellSouth Comments at 15; Verizon Comments, Att. B at 10-11.

[59] BellSouth Comments at 15-16; Verizon Comments, Att. B at 10-11.

[60] 47 C.F.R. § 32.5200.

[61] *See Phase II Report and Order*, 16 FCC Rcd at 19938-39 para. 64.

[62] Joint Conference Report at 21.

[63] AT&T Comments at 18; NASUCA Comments at 8; RUS Comments at 2; Wisconsin Comments at 13.

[64] BellSouth Comments at 16-17; SBC Comments, Att. A at 9; USTA Comments at 11-12; Verizon Comments, Att. B at 11-12.

33. We decline to amend Part 32 by adding new universal service expense and revenue accounts. Currently, carriers record universal service support receipts in the revenue accounts for the service supported. Universal service support payments are recorded in Account 6540, Access expense.[65] It would be administratively burdensome and costly for carriers to create new revenue and expense accounts, with subaccounts, to record universal service support receipts and payments. Moreover, as noted by the RBOCs and USTA, the Commission already collects universal service information on FCC Form 499, and additional information is available from USAC.

### B. Affiliate Transactions Rules

34. The Joint Conference considered whether the Commission should change its affiliate transactions rules, as codified in Section 32.27 of the Commission's rules.[66] In its final report, the Joint Conference recommends changes to four areas of these rules, as discussed in the following paragraphs.

#### 1. Fair Market Value Comparisons for Assets Totaling Less Than $500,000

35. The Joint Conference reviewed the Commission's Phase II decision to eliminate the need for carriers to make a fair market value comparison for assets totaling less than $500,000 per affiliate, and it recommends that the rule stand, as amended.[67] No commenters oppose the $500,000 threshold for asset fair market value comparisons. Wisconsin, however, points out that it has adopted a lower threshold for small carriers in its state.[68] We agree with the Joint Conference that this rule should be retained, as amended,[69] because it reduces carrier burden, corresponds with our rule for services, and no party has pointed to any problems that might have arisen with respect to this rule change since the rule change took effect.

#### 2. Establishment of Floor and Ceiling Threshold

36. Prior to the Phase II proceeding, our rules required that where a carrier was the recipient of an asset or service, that asset or service was recorded on the carrier's books at the lower of cost or fair market value.[70] If the carrier provided the asset or service, the carrier valued the transferred asset or service at the higher of cost or fair market value. In the Phase II proceeding, we modified these rules to permit carriers to use the higher or lower of cost or market valuation as either a floor or ceiling when valuing transactions between affiliates.[71] The change approved in the *Phase II Report and Order* allows carriers to assign whatever value they deem appropriate for a transaction, as long as the value falls within

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[65] *Accounting for Universal Service Support Payments and Receipts*, RAO Letter 27 to Responsible Accounting Officer, 13 FCC Rcd 16567 (1998).

[66] 47 C.F.R. § 32.27.

[67] *See* Joint Conference Report at 21-22.

[68] Wisconsin Comments at 13-15.

[69] *See* 47 C.F.R. § 32.27(b)(3).

[70] Generally, "cost" is the fully distributed cost (FDC) when valuing services, and is the net book cost (NBC) when valuing assets.

[71] *Phase II Report and Order*, 16 FCC Rcd at 19948 para. 92. *See* 47 C.F.R. §§ 32.27(b)(1) and (2), 32.27(c)(1) and (2). When assets or services are sold by or transferred from a carrier to an affiliate, the higher of fair market value and net book cost establishes a floor, below which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or greater than the floor. As for the ceiling, when assets or services are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and net book cost establishes a ceiling, above which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or less than the ceiling.

the parameters of the adopted floor and ceiling. The effect of this rule change is to allow carriers greater flexibility in valuing these transactions.[72]

37. The Joint Conference believes that allowing this type of flexibility permits too much discretion in the valuing of affiliate transactions by an ILEC. It maintains that a comparison with cost or fair market value should remain the touchstone of valuing these transactions. It argues that the "unfettered discretion" afforded by the newly approved floor and ceiling provisions of the Commission's rules provides "unrestrained" opportunities for anticompetitive manipulation of costs, revenues and earnings, which it believes are precisely the types of problems that led to the Joint Conference's creation.[73] Thus, to deter such anticompetitive effects, the Joint Conference recommends that the Commission reverse its decision to allow ILEC discretion in valuing affiliate transactions as long as the valuation complies with a prescribed floor or ceiling.[74] AT&T and Wisconsin support the Joint Conference's recommendation.[75]

38. The RBOCs, Sprint, and USTA oppose the Joint Conference's recommendation.[76] BellSouth claims that any concern regarding a link between the value of affiliate transactions and ILEC prices to end users is unfounded because under price cap regulation, ILEC customer prices no longer change when ILEC booked cost changes.[77] BellSouth argues that under price cap regulation, whether the ILEC records affiliate transactions at either too low for a purchase or too high for a sale is irrelevant.[78] SBC adds that ILECs' affiliate transactions are reported in the cost allocation manuals (CAMs) submitted annually to the Commission, and that the CAMs are subject to an independent audit every two years.[79]

39. As we stated in the *Phase II Report and Order*, we continue to believe that permitting carriers to use a floor or ceiling when valuing transactions does not harm ratepayers because it permits the regulated carrier to pay less when buying from a nonregulated affiliate, and charge more when selling to a nonregulated affiliate.[80] We recognize that permitting the use of a floor and ceiling for recording affiliate transactions could conceivably have an anticompetitive effect, although the use of price cap regulation ameliorates this concern for many carriers. It seems unlikely, however, that a transaction would have such an effect, particularly if the transaction is not priced below incremental cost. Further, we have safeguards in place to detect and deter anticompetitive conduct. Carriers must disclose their affiliate transactions in their annual CAM filings, and these transactions are audited every two years by independent auditors. We therefore reject the Joint Conference's recommendation. We reaffirm that carriers can use the floor or ceiling in transactions with affiliates, as long as such transactions comply with the Communications Act, the Commission's rules and orders, and are not otherwise anticompetitive.

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[72] *Phase II Report and Order*, 16 FCC Rcd at 19948 para. 92.

[73] Joint Conference Report at 23.

[74] *Id.*

[75] AT&T Comments at 20-21; Wisconsin Comments at 15-16.

[76] BellSouth Comments at 24; Qwest Comments at 14-15; SBC Comments at 7-8; Sprint Comments at 4-5; USTA Comments at 10-11; Verizon Comments at 15-16.

[77] BellSouth Comments at 24.

[78] *Id.* Also, BellSouth states that prices ILECs charge for UNEs are not directly affected by affiliate transactions. BellSouth explains that UNE prices are set by state regulators based on a forward-looking cost basis, and not on embedded booked costs. *Id.* at 25.

[79] SBC Comments at 8-9.

[80] *See Phase II Report and Order*, 16 FCC Rcd at 19948 para. 92.

### 3. Prevailing Price Treatment Threshold

40. The Commission's affiliate transaction rules allow ILECs to use prevailing market price as a valuation method when recording transactions with affiliated companies.[81] In order for a transaction to qualify for prevailing market price valuation, sales of a particular asset or service to third parties must comprise greater than 25 percent of the total quantity of such product or service sold by an entity. In the *Phase II Report and Order*, the Commission reduced the threshold for prevailing market price valuation from 50 percent to its current 25 percent level.[82] The Joint Conference recommends that the Commission reinstate the 50 percent threshold.[83]

41. The Joint Conference argues that it is not uncommon for parties in commercial relationships to exchange mutual concessions in the sales of goods and services. It claims that ILECs frequently enter into partnership agreements and other contractual relationships with nonaffiliated third parties in which it could be advantageous for the ILEC to provide an asset or service to the third party at a favorable, below cost price. The ILEC may receive a similar concession on a product or service provided by the third party. In such a situation, an ILEC could strategically under-price a relatively small amount of a particular service or asset to gain an offsetting concession from the third party, and at the same time confer on its affiliate a competitive advantage. By under-pricing services or assets, the ILEC would be absorbing some of the cost and thereby lowering the affiliate's overall cost structure, to the overall benefit of the ILEC's holding company.[84] AT&T supports the Joint Conference's position.[85] Wisconsin suggests that in determining whether to increase the threshold from the current 25 percent, the Commission should consider whether a lower percentage represents a significant influence over company pricing policy. If the Commission determines that 25 percent of an entity's business is insufficient to impose a significant influence over the entity when setting the prices it charges to an outside third party, then the Commission could either reinstate the 50 percent threshold or set the threshold at a level where the Commission believes there will be significant influence on the pricing.[86]

42. The RBOCs, Sprint and USTA oppose this recommendation.[87] BellSouth believes that the 25% threshold established by the Commission in the Phase II proceeding is more than sufficient to ensure that there is a market price, because it claims that it only takes one transaction between entities to establish a market price.[88] Further, BellSouth argues that the Joint Conference's concerns regarding prevailing price apply to rate-of-return carriers. BellSouth urges the Commission not to modify its affiliate transactions rules for price cap ILECs in response to concerns about rate-of-return companies. Moreover, BellSouth contends that the Commission should not modify its rules for any ILECs, because these concerns can be addressed in individual ratemaking proceedings.[89]

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[81] *See* 47 C.F.R. § 32.27(d).

[82] *Phase II Report and Order*, 16 FCC Rcd at 19949 paras. 93-94.

[83] Joint Conference Report at 23.

[84] *Id.* at 23-24.

[85] AT&T Comments at 21-22.

[86] Wisconsin Comments at 17.

[87] BellSouth Comments at 26; Qwest Comments at 14-15; SBC Comments at 7-8; Sprint Comments at 5; USTA Comments at 10-11; Verizon Comments at 15-16.

[88] BellSouth Comments at 26.

[89] *Id.*

43. We decline to revisit our decision to lower the threshold for prevailing price valuation. We continue to believe that the 25 percent threshold is adequate to establish a prevailing market price, and that it would unlikely be "a sustainable strategy for a firm significantly to under-price transactions with 25 percent of its customers in order to be able to record transactions at this price with an affiliate."[90] Therefore, we will retain 25 percent as the threshold required to qualify for prevailing price valuation of sales of a particular asset or service to third parties.

### 4. Modification of the Centralized Services Exception to the Estimated Fair Market Value Rule

44. Section 32.27(c)(3) of the Commission's affiliate transaction rules contains an exception to the valuation rules for transactions involving affiliates that provide services solely to members of the corporate family.[91] This exception, referred to as the centralized services exception, permits ILECs to record all services received from such affiliates at fully distributed costs (FDC) without determining that the FDC is below fair market value. The Joint Conference recommends that the Commission eliminate the centralized services exception to the affiliate transactions rules, thereby making such transactions subject to the general rule requiring fair market value analysis.

45. The Joint Conference argues that the centralized services exception allows the carrier and its holding company an opportunity to have the carrier pay in excess of market prices for services obtained from an affiliate. According to the Joint Conference, the carrier may find it advantageous to show artificially high costs and, as a result, depressed earnings. The Joint Conference also argues that regulated carriers that record excessive costs for services from an affiliate can use those costs to justify excessive wholesale or retail rates.[92]

46. We established the centralized services exception in the *Accounting Safeguards Order* to relieve the ILEC burden of performing fair market valuations for administrative services that they receive from affiliated services companies.[93] These affiliated services companies exist solely to provide services to the corporate family and have no transactions with third parties. The services they provide often are tailored to the needs of the corporate family. BellSouth, Sprint, USTA and Wisconsin state that the Commission should retain the centralized services exception because the burdens of performing fair market valuations for these services outweigh the benefits.[94] We agree with these commenters. In addition, the use of fully distributed cost to value these transactions is appropriate as a means of allowing all regulated and nonregulated affiliates to share the economies of scale and scope derived from the provision of these services on a centralized basis. Therefore, we will not modify the centralized services exception to the estimated fair market value rule.

### 5. Nonregulated to Nonregulated Transactions

47. The Commission's affiliate transactions rules apply to all transactions between the carrier and its nonregulated affiliates, including transactions between a carrier's nonregulated operations and its nonregulated affiliates. In the Phase II proceeding, the Commission considered whether these activities

[90] *Phase II Report and Order*, 16 FCC Rcd at 19949 para. 94.

[91] 47 C.F.R. § 32.27(3).

[92] Joint Conference Report at 25-26.

[93] *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 71539 (1996) (*Accounting Safeguards Order*).

[94] BellSouth Comments at 27-29; Sprint Comments at 6-7; USTA Comments at 10-11; Wisconsin Comments at 11-12.

between a carrier's nonregulated operations and its nonregulated activities should be exempt from its affiliate transactions rules, and determined that action on this issue should be deferred for a future proceeding.[95] The Joint Conference considered whether the Commission should continue to defer action on this matter, and concluded that the Commission should take no additional action at this time.[96] Although BellSouth and Verizon disagree, they provide no additional arguments than those already considered in previous proceedings.[97] We will, therefore, adopt the Joint Conference's recommendation and take no action on this issue.

### 6. Intra-Holding Company ILEC-to-ILEC Transfers of Assets or Services

48. The Joint Conference recommends that the Commission clarify its affiliate transactions rules to be applicable to transactions between ILECs within the same holding company, and that the fully distributed cost standard applies to such transactions. The Joint Conference believes that inapplicability of transfer pricing rules affords an opportunity for ILECs to manipulate their costs, revenues and earnings in a manner that could lead to inflated wholesale or retail rates or inaccurate reports of earnings by the ILECs. They also claim that the opportunity for cost manipulation could permit a holding company to artificially manipulate earnings among its ILECs as a means of gaming different regulatory issues in different states.[98]

49. The RBOCs, Sprint, USTA and Wisconsin oppose the Joint Conference's recommendation.[99] BellSouth contends that under price cap regulation, wholesale customer prices are forward-looking rather than historical.[100] Sprint states that there is no record of ILECs using transfer pricing between ILECs to manipulate costs, revenues and earnings to justify this change, and if such evidence comes to light, it should be dealt with on an individual basis.[101] Sprint further states that accounting for these transactions at the higher of fully distributed cost or fair market value would cause a dilemma. The selling ILEC would have to record the higher cost while the purchasing ILEC would record the lower cost, thus causing asymmetrical pricing records which would cause problems in consolidating financial records.[102]

50. In the reconsideration order in the joint cost proceeding, we specifically clarified that our affiliate transactions rules do not apply to transactions between an ILEC and its regulated affiliates.[103] We agree with Wisconsin and other commenters that we should not amend our rules to apply our affiliate transactions rules to transactions between ILECs within the same holding company. Our affiliate transactions rules were designed to prevent cross-subsidization between an ILEC and its nonregulated affiliates. The asymmetrical structure of our affiliate transactions rules, which record transfers out of

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[95] *Phase II Report and Order*, 16 FCC Rcd at 19952 para. 100.

[96] Joint Conference Report at 26.

[97] *See* BellSouth Comments at 28-29; Verizon Comments at 17-18.

[98] Joint Conference Report at 27.

[99] BellSouth Comments at 29; Qwest Comments at 14-15; SBC Comments at 7-8; Sprint Comments at 7; USTA Comments at 10-11; Verizon Comments at 18-19; Wisconsin Comments at 18.

[100] BellSouth Comments at 29.

[101] Sprint Comments at 7.

[102] *Id.*

[103] *See Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1330-31 (1987) (*Joint Cost Order*), *recon.*, 2 FCC Rcd 6283 (1987), *further recon.*, 3 FCC Rcd 6701 (1988), *aff'd sub nom. Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C.Cir. 1990).

regulation at the higher of cost or market value and transfers into regulation at the lower of cost or market value, was not designed for, and is not appropriate for, transactions between regulated entities. With respect to asset transfers, there are other mechanisms in place to guard against improper transfer pricing between regulated entities. Our Part 32 rules are premised upon an original cost concept that requires regulated companies to record property, plant and equipment acquired from any regulated company at its original cost to that company.[104] With respect to services, we decline to adopt a new affiliate transactions requirement in the absence of any evidence that such transactions have been, or are being, used for the manipulative purposes hypothesized by the Joint Conference. Therefore, the imposition of additional rules and procedures for transactions between carriers would be unduly burdensome without a corresponding benefit.

## C. Reporting Requirements and Other Matters

### 1. ARMIS 43-07, Table II, "Loop Sheath Kilometers" vs. "Sheath Kilometers"

51. In the *Phase II Report and Order*, we changed the title of the first section of Table II of ARMIS 43-07 from "Sheath Kilometers" to "Loop Sheath Kilometers," which limited the collection of data on transmission facilities to only local loop facilities connecting customers to their serving offices. In adopting this revision, we stated that this information would be more useful for policy makers and interested parties if it were narrowed to local loop facilities.[105] A petition for reconsideration of the *Phase II Report and Order* filed jointly by BellSouth, SBC and Verizon (Petitioners) requests that the Commission change the ARMIS 43-07, Table II reporting requirement back to sheath kilometers.[106] The petitioners argue that they cannot gather the loop sheath kilometer information through their existing systems, and that the Commission has not stated why this change would be necessary in the public interest.[107] The petitioners state that they would have to perform additional, time-consuming studies in order to separately identify loop sheath kilometers. They argue that the burden of separately recording loop sheath kilometers outweighs any benefits.[108]

52. The Joint Conference takes no position on whether the Commission should collect the loop sheath kilometer data as adopted in Phase II, but it recommends that the Commission reinstate the reporting of sheath kilometer data that was collected before the change in Phase II.[109] In its comments to the *Notice*, Wisconsin states that the Commission may wish to consider supplementing the loop sheath kilometer reporting requirement with the former sheath kilometer reporting requirement.[110] USTA and Verizon state that the Commission has no need for the loop sheath kilometer data because it collects other data on loop facilities such as the number of loop lines. USTA and Verizon also state that the studies required to identify the loop segment would be very time-consuming and expensive.[111]

53. We reinstate the original ARMIS 43-07 Table II sheath kilometer reporting requirement and eliminate the requirement for reporting loop sheath kilometers. All of the commenters express a need

[104] *See* 47 C.F.R. § 32.2000(b)(1).

[105] *Phase II Report and Order*, 16 FCC Rcd at 19973 para. 170.

[106] *See* Joint Petition at 8.

[107] Joint Petition at 8.

[108] Joint Petition at 9.

[109] Joint Conference Report at 31.

[110] Wisconsin Comments at 18-19. In addition, Wisconsin notes that it currently obtains total fiber optic sheath miles from ILECs in annual reports filed with the Wisconsin Commission.

[111] USTA Comments at 10; Verizon Comments, Att. B at 16.

or preference for the reporting of sheath kilometers, and none of the commenters express strong support for the retention of the loop sheath kilometer reporting requirement. In addition, the petitioners have convincingly demonstrated in their comments that the burden of separately identifying sheath kilometers associated with loop facilities would be onerous. Therefore, we reinstate the original reporting requirements for sheath kilometers and change the title of Table II back to "Sheath Kilometers."

### 2. ARMIS Report 43-07 Broadband Infrastructure Reporting

54. In the *Phase II Report and Order*, we expanded the ARMIS Report 43-07 to include information on: (1) hybrid fiber-copper loop interface locations; (2) number of customers served from the interface locations; (3) XDSL customer terminations associated with hybrid fiber-copper loops; and (4) XDSL customer terminations associated with non-hybrid loops. In adopting these revisions, we concluded that there was "a present federal regulatory need, at least for the near term, to collect such data to evaluate the effects of our public policy decisions and to consider whether more market-oriented approaches are appropriate."[112] We also sought comment in the further notice on whether we should in the future collect this information as part of the local competition and broadband data-gathering program, rather than through ARMIS.[113]

55. In the petition for reconsideration filed jointly by BellSouth, SBC and Verizon, the petitioners request that the Commission require additional broadband infrastructure information to be reported on Form 477, rather than through ARMIS.[114] The petitioners believe that broadband infrastructure data is proprietary information and should receive confidential treatment. The petitioners state that when the Commission adopted Form 477, it recognized that broadband data should be protected from public disclosure, and instituted procedures to make it easier to request confidential treatment on the 477.[115] The petitioners state that the inclusion of additional broadband reporting requirements in ARMIS imposes unequal regulatory treatment on Class A ILECs because they would be the only providers reporting this information publicly.[116] The petitioners argue that using Form 477 instead of ARMIS would allow the Commission to consider all broadband issues together, and would avoid subjecting Class A ILECs to potentially duplicative and conflicting reporting requirements.[117] In opposing the petition, AT&T argues that shifting the reporting of fiber and DSL deployment to Form 477 would impose substantial new burdens on all other LECs that meet the Form 477 reporting threshold.[118]

56. The Joint Conference recommends that the Commission deny the petition regarding the reporting of broadband infrastructure data in ARMIS Report 43-07. However, the Joint Conference also recommends that the Commission continue to evaluate whether the data collection should be expanded to a larger universe of carriers.[119] In their comments to the *Notice*, Sprint, BellSouth and Verizon state that the broadband infrastructure data should be collected in the Form 477,[120] while AT&T states that this data

[112] *Phase II Report and Order*, 16 FCC Rcd at 19975 para. 175.

[113] *Id.* at 19986-87 para. 211

[114] Joint Petition at 10-11.

[115] *Id.* at 10.

[116] *Id.* at 10-11.

[117] *Id.* at 11.

[118] AT&T Opposition to Joint Petition at 10-11.

[119] Joint Conference Report at 32.

[120] Sprint Comments at 8; BellSouth Comments at 29-30; Verizon Comments, App. B at 14.

should be collected through the ARMIS Report 43-07.[121] Wisconsin states that the Commission should consider expanding this data collection to all filers of the Form 477.[122]

57. We deny the petition for reconsideration. We have recently opened a rulemaking proceeding in which we propose to greatly improve the Form 477 data collection program.[123] After completing that rulemaking proceeding, we will reevaluate the need to continue collecting ILEC broadband infrastructure data in ARMIS.

### 3. Definition of ILEC

58. Section 32.11, Classification of companies,[124] defines who is subject to our Part 32 accounting rules and recordkeeping requirements. In the *Phase II Report and Order*, we modified section 32.11 by making explicit that it applies only to ILECs and any other companies that we designate.[125] We noted that the former language of section 32.11, adopted before there were "competitive local exchange carriers," applied the accounting rules and recordkeeping requirements to "carriers." However, the Commission stated that it actually applied section 32.11 only to ILECs because they are dominant carriers in their markets.[126]

59. In revising the language regarding Part 32 applicability,[127] we relied upon the definition of "ILEC" in section 251(h)(1) of the Communications Act: "the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that—(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b)...; or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)."[128]

60. In a separate petition for reconsideration filed March 8, 2002, SBC requests that the Commission amend the definition of ILEC contained in section 32.11 of its rules by specifying that the rule does not apply to an ILEC's successor or assign.[129] SBC asserts that the modified rule is overly broad and may include companies that are not dominant in their markets.[130] SBC explains that under the revised section 32.11 definition, its advanced services affiliate, SBC Advanced Solutions, Inc. ("ASI"), a successor or assign company, would be considered dominant and subject to the Commission's Part 32 accounting rules and ARMIS reporting requirements. SBC argues that ASI is nondominant, and should not be subject to Part 32.[131] SBC further argues that the Commission's reliance on section 251(h) in defining dominant carriers subject to the accounting rules is misplaced because section 251(h) does not

[121] AT&T Comments at 27.

[122] Wisconsin Comments at 19.

[123] *See Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, CC Docket No. 99-301, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 04-81 (rel. April 16, 2004).

[124] *See* 47 C.F.R. § 32.11.

[125] *Phase II Report and Order*, 16 FCC Rcd at 19960-61 paras. 126-127.

[126] *Id.*

[127] *Phase II and III Notice*, 15 FCC Rcd at 20587 para. 44.

[128] 47 U.S.C. § 251(h)(1).

[129] SBC Petition at 1-3 .

[130] *Id.* at 1-3.

[131] *Id.* at 3-4.

define dominant carriers. In opposing SBC's petition, AT&T states that SBC is wrong to argue that an ILEC's status under section 251(h) says nothing about whether it is dominant in the markets in which it operates. On the contrary, AT&T argues that as demonstrated in broadband proceedings before the Commission, ILECs in general, and SBC in particular, retain pervasive market power in the provision of broadband services.[132]

61. The Joint Conference recommends that the Commission deny SBC's petition to change the definition of ILEC in section 32.11. The Joint Conference states that approval of the limited definition of an ILEC, as proposed by SBC, would provide ILECs with an inappropriate opportunity to avoid the statutory and regulatory obligations of ILECs by transferring a discrete service to a successor or assign, and should be denied.[133] In its comments to the *Notice* in this proceeding, Wisconsin agrees with the Joint Conference's recommendation, and states that the Commission's accounting and recordkeeping requirements should be applied to all ILECs, with exceptions warranted in only highly unusual circumstances.[134] BellSouth, SBC and Verizon disagree with the Joint Conference's recommendation, arguing that these rules should not apply to successor or assign companies that are not dominant in their markets.[135]

62. We grant in part and deny in part SBC's petition to modify section 32.11 of the Commission's rules. We will not exclude successor or assign companies from the definition of ILEC in section 32.11 of our rules, but we will amend section 32.11 to ensure that the rule does not sweep in successor and assign companies that are non-dominant in the markets in which they operate. We agree with the Joint Conference that inclusion of successor/assign prevents ILECs from transferring regulatory assets and operations out of their telephone companies to affiliates to avoid the Commission's Part 32 accounting rules and recordkeeping requirements. We will continue to include successor/assign in the definition of ILECs subject to the Part 32 accounting and recordkeeping requirements because we believe that some successor/assign companies may be local exchange carriers that are dominant in their markets. We recognize, however, that section 32.11 in its present form does not address the situation when successors or assigns of ILECs are non-dominant in markets that they serve. We therefore modify section 32.11 by adding language to exclude from our accounting requirements successor or assign companies that are found to be non-dominant.

### D. Other Issues Raised in the *Notice*

63. As noted above, the Commission has suspended the implementation of four previously-adopted accounting and recordkeeping rules to allow the Joint Conference time to review them, and for the Commission to act upon the Joint Conference's recommendation.[136] The suspension currently is effective through June 30, 2004.[137] In the *Notice*, we sought comment on further delaying implementation until January 1, 2005,[138] which is the next date to coincide with the start of a fiscal year after six months' notice required by the Act for the rules to take effect.[139] Commenters favor this proposal, because the affected carriers can avoid unnecessarily implementing the older set of rules only to

[132] AT&T Opposition to SBC Petition at 4-5.

[133] Joint Conference Report at 36.

[134] Wisconsin Comments at 19.

[135] BellSouth Comments at 30; SBC Comments at 9-11; Verizon Comments, Att. B at. 13.

[136] *See supra* note 6 and accompanying text.

[137] *Id.*

[138] *Notice*, 18 FCC Rcd at 26995 para. 8.

[139] *See* 47 U.S.C. § 220(g).

implement the new ones adopted herein on January 1, 2005.[140] Accordingly, we suspend the rule changes described above through December 31, 2004. Finally, we believe that the foregoing reasons also provide good cause for allowing this deferral to become effective before July 1, 2004 and on less than 30 days' notice by publication in the Federal Register.[141]

64. In response to the *Notice*, many commenters have included additional proposals and specific areas for investigation or study by the Joint Conference and the Commission. Commenters have requested that we address such issues as establishing different regulatory accounting requirements for rate-of-return and price cap carriers,[142] eliminating continuing property recordkeeping,[143] reinstating amortization reserve accounts,[144] and various other regulatory accounting relief for the RBOCs. We appreciate the responses we have received. The Joint Conference and the Commission will continue to examine these issues.

65. We anticipate that this order will be published in the Federal Register on or before July 1, 2004. However, to ensure that carriers subject to the suspended accounting requirements have actual notice of the further deferral before its July 1, 2004 effective date, we are serving those entities by overnight mail.

## III. PROCEDURAL MATTERS

### A. *Ex Parte* Requirements

66. This proceeding will continue to be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under 47 C.F.R. § 1.1206. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. *See* 47 C.F.R. § 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, S.W., TW-B204, Washington, D.C. 20554, and serve with one copy: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A452, Washington, D.C. 20554, Attn: Clifford Rand. Parties shall also serve with one copy: Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, 1-800-378-3160, <WWW.BCPIWEB.COM>.

### B. Paperwork Reduction Act Analysis

67. This Order has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

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[140] *See, e.g.*, SBC Comments at 11; Verizon Comments at 27.

[141] The Administrative Procedure Act provides that a rule change may become effective before the usual 30 days' notice by publication in the Federal Register where "good cause" exists. 5 U.S.C. § 553(d)(3).

[142] BellSouth Comments at 5.

[143] Verizon Comments at 20.

[144] RUS Comments at 2.

### C. Final Regulatory Flexibility Certification

68. The Regulatory Flexibility Act of 1980, as amended (RFA),[145] requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[146] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[147] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[148] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[149]

69. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.[150] Under the Commission's rules, there are two classes of ILECs for accounting purposes: Class A and Class B. Carriers with annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold, currently $123 million, are classified as Class A; those falling below that threshold are considered Class B. Class A carriers are required to maintain a more detailed level of accounts than Class B carriers. In addition, Class A carriers are required to file ARMIS Reports annually while Class B carriers are not subject to the ARMIS Reporting requirement. Class A carriers with annual revenues in excess of $123 million but less than $7.240 billion are classified as mid-sized carriers and are permitted to maintain accounts at the less detailed Class B level. The less detailed level of accounting required under Class B was established to accommodate smaller carriers and relieve them of the burdens associated with maintaining the more detailed level of accounts. The accounting and reporting requirements adopted by the Commission in this Report and Order are mandatory only for Class A non-mid sized carriers.[151] These carriers have annual revenues in excess of $7.240 billion, therefore it is likely that these companies employ more than 1,500 employees and are not small businesses under the SBA's definition for Wired Telecommunications Carriers.[152]

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[145] The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[146] 5 U.S.C. § 605(b).

[147] 5 U.S.C. § 601(6).

[148] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[149] 15 U.S.C. § 632.

[150] 13 C.F.R. § 121.201, NAICS code 517110.

[151] The requirements would apply only to those Class B and mid-sized Class A carriers that elect to follow them pursuant to section 32.11(e) of the Commission's rules. Any impact, which we find will not be significant economically, on these smaller carriers may be avoided at their option.

[152] To the extent any mid-sized Class A carriers (with annual revenue between $123 million and $7.240 billion) or Class B carriers (with annual revenue less than $123 million) that voluntarily elect to comply with the requirements of this order employ fewer than 1,500 employees and are therefore small businesses under the SBA's definition, there is no significant economic impact on these companies. As discussed below, the rules adopted in this Report

(continued....)

70. In this Report and Order the Commission adopts the Joint Conference's recommendations to reinstate the following Part 32 Class A accounts: Account 5230, Directory revenue, Account 6621, Call completion services, Account 6622, Number services, Account 6623, Customer services, Account 6561, Depreciation expense—telecommunications plant in service; Account 6562, Depreciation expense—property held for future telecommunications use; Account 6563, Amortization expense—tangible; Account 6564 Amortization expense—intangible; Account 6565, Amortization expense—other. These accounting changes are mandatory only for non-mid-sized Class A ILECs. The reinstatement of these accounts, however, will not impose any additional burden on non-mid-sized Class A ILECs because the Commission's prior action to aggregate the accounts has been suspended. Similarly, the Commission's reinstatement of the sheath kilometer reporting requirement in the ARMIS 43-07 will not impose any additional burden on non-mid-sized Class A ILECs. Non-mid-sized Class A ILECs are meeting these requirements at the current time, therefore the rule changes in this Report and Order will impose no economic burden.[153]

71. Although the Commission declines to adopt any new accounts, it will require that non-mid-sized Class A ILECs maintain subsidiary record categories for unbundled network element revenues; resale revenues, reciprocal compensation revenues, and other interconnection revenues in the accounts in which these revenues are currently recorded. The use of subsidiary record categories allows carriers to use whatever mechanisms they choose, including those currently in place, to identify the relevant amounts as long as the information can be made available to state and federal regulators upon request. Also, the Commission is requiring the ARMIS reporting of the wholesale and retail percentages applicable to Account 6623, Customer services. The use of subsidiary record categories for interconnection revenue and the ARMIS reporting of wholesale retail percentages do not require massive changes to the ILECs' accounting systems and are far less burdensome alternatives than the creation of new accounts and/or subaccounts.[154]

72. Even if there are mid-sized class A carriers or Class B carriers that are small businesses within the SBA's definition (i.e., with fewer than 1,500 employees) that may elect to comply with the rules, the impact of the rules is economically *de minimis* and negligible. As discussed above, compliance with the rules adopted herein imposes no new burdens. Accordingly, even if there is economic impact on any such small carrier, it is not significant. Therefore, we certify that the requirements of the Report and Order will not have a significant economic impact on a substantial number of small entities.

73. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[155] In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.[156]

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and Order merely require companies to continue following the current procedures, therefore there is no significant economic burden on any carrier, large or small.

[153] This is also true for mid-sized Class A carriers and Class B carriers that may be complying voluntarily with the Class A requirements – these carriers are meeting the requirements at the current time so there will be no economic impact on them due to the adoption of the Report and Order.

[154] Similarly, there is no significant economic impact on mid-sized Class A carriers and Class B carriers that may be complying voluntarily with these requirements because the carriers can use mechanisms currently in place to identify the newly required information.

[155] *See* 5 U.S.C. § 801(a)(1)(A).

[156] *See* 5 U.S.C. § 605(b).

## IV. ORDERING CLAUSES

74. Accordingly, IT IS ORDERED that pursuant to sections 1, 4, 201-205, 215 and 218-220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, and 218-220, Part 32 of the Commission's rules, 47 C.F.R. Part 32, IS AMENDED as described above and in Appendix B below.

75. IT IS FURTHER ORDERED that pursuant to section 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(g), changes to our Part 32, System of Accounts, adopted in this Report and Order shall take effect six months after publication in the Federal Register following OMB approval, unless a notice is published in the Federal Register stating otherwise. We will, however, permit carriers to implement Part 32 accounting changes as of January 1, 2005.

76. IT IS FURTHER ORDERED that pursuant to sections 1, 4, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, and 220, and section 1.401 of the Commission's rules, 47 C.F.R. § 1.401, the Petition of BellSouth, SBC and Verizon for Reconsideration and the SBC Communications, Inc. Petition for Reconsideration are GRANTED in part, to the extent indicated herein, and DENIED in part.

77. IT IS FURTHER ORDERED that pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 215, and 218-220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 215 and 218-220, FCC Report 43-07, the Infrastructure Report, IS REVISED as set forth above.

78. IT IS FURTHER ORDERED that pursuant to sections 1, 4(i), 4(j), 5(c), 201, 202, 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 201, 202, 219 and 220, section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and sections 553(b) and 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. §§ 553(b), 553(d)(3), implementation of certain rule modifications described in paragraph 3, above, IS SUSPENDED from July 1, 2004 through December 31, 2004.

79. IT IS FURTHER ORDERED that pursuant to the authority contained in section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, the Wireline Competition Bureau IS DELEGATED authority to implement all changes to ARMIS reporting as set forth above.

80. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary